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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,009	04/16/1999	ERIC VALLONE	061607-1020	4296
24504	7590	02/17/2005	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			DUONG, DUC T	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/293,009

Applicant(s)

VALLONE ET AL.

Examiner

Duc T. Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,13 and 16-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-13 and 16-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 42 is objected to because of the following informalities: In lines 3, 8, and 10, the phrase "configured to" is not a positive limitation. Such phrase, when used to claim for performing some functions, will renders the uncertainty of whether the function is actually being performs the device it called for. In this instant, it is uncertain of whether the poller performs the poll function, the analyzer performs the produce function, or the display performs the display function. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-13, and 16-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis, Jr. et al (U.S. Patent 5,867,483) in view of Schulman (U.S. Patent 5,600,632).

Regarding to claims 1, 5, 8, 11, 24, 30, and 36, Ennis discloses a system (Fig. 1) for displaying network performance parameters, comprising a means for collecting 12 (Fig. 1 col. 7 lines 22-28) from a first (site A) and a second (site B) communication

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device a plurality of network performance information (access channel and circuit level utilization information; col. 7 lines 52-57) comprising bit burst analysis information 94 (Fig. 12 col. 9 lines 9-15), each of said plurality network performance associated with a virtual circuit between the first and the second communication device (col. 7 lines 57-58); and a display module 16 configured to display the network performance information (Fig. 2 col. 8 lines 1-14), wherein, said bit burst analysis information (col. 9 lines 9-15) comprises a plurality of bit burst counters (col. 9 lines 28-30), each of said bit burst counters counting a number of bits (col. 11 lines 47-57) that was placed into one of a plurality of burst categories (col. 10 lines 34-59, the five percentage range of burst utilization read on the burst categories), wherein said first and second communication device are each configured to support end user devices (Fig. 1 col. 7 lines 12-16).

Ennis fails to teach for collecting network performance information such as network latency information, data delivery success information, and frame size distribution information.

However, Schulman discloses a system and method for collecting network performance information such latency, packet loss (delivery success information), and packet size distribution (Fig. 3 col. 4 lines 58-67 and col. 5 lines 1-9).

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to employ the collecting of network performance information as taught by Schulman in Ennis's system to provide the network administrator with more information about the network functionality. The motivation to do so would have been to create a more efficient and cost effective service level for users.

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Regarding to claims 2, 6, and 25, Ennis discloses a graphical user interface 63 (Fig. 2 col. 8 lines 1-8).

Regarding to claims 3, 7, 9, 12, 26, 33, and 39, Ennis discloses the network performance parameters are collected from said at least two communication devices by said network management system (Fig. 1 col. 7 lines 22-28).

Regarding to claims 10, 13, 34, and 40, Ennis discloses of allowing an administrator of a network the ability to determine, from said plurality of network performance parameter views, the performance of said communication network (col. 13 lines 61-66).

Regarding to claims 21-23 and 43, Ennis discloses the poller is further configured to poll the first communication device over a first secondary management channel 10 and to poll the second communication device over a second secondary management channel 11 (Fig. 1 col. 7 lines 25-28).

Regarding to claims 27, 28, 31, 32, 37, 38, 47, and 48, Ennis discloses the virtual circuit is a permanent virtual circuit (claim 47) or switched virtual circuit (claim 48), see col. 7 lines 57-58.

Regarding to claim 42, Ennis discloses a system (Fig. 1) for displaying network performance parameters associated with a first (site A) and a second communication device (site B), comprising a poller 12 (Fig. 1 col. 7 lines 22-28) configured to poll the first and the second communication device for a plurality of network performance information (access channel and circuit level utilization information; col. 7 lines 52-57) comprising bit burst analysis information 94 (Fig. 12 col. 9 lines 9-15), each of said

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plurality network performance associated with a virtual circuit between the first and the second communication device (col. 7 lines 57-58); an analyzer 36 configured to produce a report of the plurality of network performance information (Fig. 3 col. 8 lines 6-15); and a display module 16 configured to display the report (Fig. 2 col. 8 lines 1-14).

Ennis fails to teach for collecting network performance information such as network latency information, data delivery success information, and frame size distribution information.

However, Schulman discloses a system and method for collecting network performance information such latency, packet loss (delivery success information), and packet size distribution (Fig. 3 col. 4 lines 58-67 and col. 5 lines 1-9).

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to employ the collecting of network performance information as taught by Schulman in Ennis's system to provide the network administrator with more information about the network functionality. The motivation to do so would have been to create a more efficient and cost effective service level for users.

Regarding to claim 44, Ennis discloses a statistics database 35 configured to store the plurality of network performance information (Fig. 3 col. 10 lines 16-23).

Regarding to claim 45, Ennis discloses a formatter 37 configured to prepare the report for visual presentation (Fig. 3 col. 8 lines 56-60).

Regarding to claim 46, Ennis discloses means for setting the rate (sampling interval) at which the poller operates (col. 9 lines 22-25).

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Regarding to claims 18-20, 29, 35, and 41, Ennis discloses the display means displaying all the network parameters simultaneously (Fig. 11 col. 15 lines 21-45).


Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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RICKY NGO
PRIMARY EXAMINER 2/15/05